



RECEIVED

2005 FEB 11 PM 2:05

BellSouth Telecommunications, Inc  
333 Commerce Street  
Suite 2101  
Nashville, TN 37201-3300

joelle.phillips@bellsouth.com

February 11, 2005

Joelle J Phillips  
Attorney  
615 214 6311  
Fax 615 214 7406

DOCKET ROOM

VIA HAND DELIVERY

Hon. Jean Stone, Hearing Officer  
Tennessee Regulatory Authority  
460 James Robertson Parkway  
Nashville, TN 37238

Re: *BellSouth's Motion For The Establishment Of A New Performance Assurance Plan*  
Docket 04-00150

Dear Hearing Officer Stone:

Enclosed are the original and fourteen copies of BellSouth's *Response to Motions to Quash* in the referenced matter. BellSouth respectfully requests a status conference be scheduled to discuss this matter. BellSouth also notes that, until there is some ruling otherwise, BellSouth intends to assume that the dates suggested by CompSouth in its proposed revised procedural schedule will be followed by the parties

Copies of the enclosed are being provided to counsel of record.

Cordially,

Joelle Phillips

JJP:ch

BEFORE THE TENNESSEE REGULATORY AUTHORITY  
Nashville, Tennessee

In Re: *BellSouth's Motion For The Establishment Of A New Performance Assurance Plan*

Docket 04-00150

**BELLSOUTH TELECOMMUNICATIONS, INC.'S RESPONSE TO  
MOTIONS FILED ON BEHALF OF ACCESS INTEGRATED  
NETWORK, INC.; ACCESS POINT, INC.; AT&T OF THE SOUTH  
CENTRAL STATES, LLC; COVAD COMMUNICATIONS COMPANY;  
IDS TELECOM, LLC; ITC^DELTACOM; KMC TELECOM;  
LECSTAR TELECOM, INC.; MCImetro TRANSMISSION SERVICES,  
LLC; MCI WORLD COM COMMUNICATIONS, INC.; MOMENTUM  
TELECOM, INC.; NETWORK TELEPHONE CORP.; NUVOX  
COMMUNICATIONS, INC.; TALK AMERICA; XSPEDIUS  
COMMUNICATIONS; and Z-TEL COMMUNICATIONS, INC.  
SEEKING TO QUASH SUBPOENAS**

BellSouth Telecommunications, Inc. ("BellSouth") files this *Response* to the several *Motions*<sup>1</sup> filed on behalf of Access Integrated Network, Inc.; Access Point, Inc.; AT&T of the South Central States, LLC; Covad Communications Company, IDS Telecom, LLC; ITC^DeltaCom; KMC Telecom; LecStar Telecom, Inc., MCImetro Transmissions Services, LLC; MCI WorldCom Communications, Inc.; Momentum Telecom, Inc.; Network Telephone Corp.; NuVox Communications, Inc.; Talk America; Xspedius Communications, and Z-Tel Communications, Inc. to quash subpoenas issued by the Tennessee Regulatory Authority ("Authority" or "TRA") and respectfully shows the Hearing Officer as follows:

On February 4, 2005, BellSouth was served with *Motions to Quash* on behalf of the members of CompSouth noted above. Upon reviewing the substance of these

---

<sup>1</sup> BellSouth is responding separately to the confusing motion filed on behalf of In-Line

identical motions, BellSouth believes the situation can aptly be described as this: Well, here we go again.

As the Hearing Officer will remember, during the recent status conference, CompSouth had failed to provide adequate responses to BellSouth's discovery. In its own right, CompSouth raised vague relevance complaints in an effort to excuse its failure. Those arguments are addressed in BellSouth's *Motion to Compel*.

The focus of the status conference, however, was clearly the issue of obtaining discovery about facts and information possessed by CompSouth's **members**. CompSouth vigorously argued that the organization's members (the entities who actually obtain wholesale service from BellSouth) were immune to the discovery, because the members did not intend to be parties in the docket. CompSouth specifically noted that the proper procedure for collecting information from these parties would be the use of subpoenas.

BellSouth issued subpoenas, as it indicated it would do during the status conference.<sup>2</sup> The subpoenas sought the same information originally sought in the discovery issued to these same companies in December, 2004 (specific factual backup for the various contentions about BellSouth's wholesale performance that have been raised by members of CompSouth who participated in the Authority workshop). BellSouth noted, during the status conference, that it believed it was important for the Hearing Officer to rule on the substance of the *Motion to Compel* filed by BellSouth, because BellSouth anticipated that, no matter the **form** of the request for this

---

<sup>2</sup> BellSouth properly served the subpoenas as set forth in Exhibit A

information, these companies would continue to raise the same objections to answering those questions. That is precisely what has happened in this case.

In this second round of "catch-me-if-you-can", the companies who received subpoenas have moved to quash these subpoenas. Like the response to the *Motion to Compel* and earlier discovery, the *Motion to Quash*, does not cite the specific request and the reason that particular request is objectionable. Again, the *Motion* raises the same arguments regarding relevance and burden of proof, which were discussed in the context of the *Motion to Compel*. For this reason, BellSouth respectfully urges that the Hearing Officer should proceed in one of two ways. Either (a) the substantive issues raised in the *Motion to Compel*, and basically reiterated in the *Motions to Quash*, should be ruled upon in order for both the parties and non-parties to proceed to answer those questions they are required to answer, or (b) the Hearing Officer could reasonably choose to simply prohibit any of the non-parties who have refused to answer the subpoenas from offering any type of evidence or opinion in this docket. Specifically, because these parties are members of CompSouth, which **does** intend to participate in this proceeding, the Hearing Officer should rule that none of CompSouth's participation, whether factual testimony or opinion, can be based upon the experience or opinion of any of the member companies who have refused to answer these questions or that of the members' employees, former employees, contractors, or any other representative.

In short, CompSouth and its members cannot have it both ways. Either they have facts to back up opinions, and they must share those facts through the discovery processes at the TRA, or the Authority must proceed on the basis of testimony from only those entities who have made themselves available to this process in the proper

way that is, like BellSouth they have answered questions put to them regarding the positions, opinions, and contentions on the issues related to the SQM/SEEMs plan proposed by BellSouth.

A review of this docket makes plain that CompSouth – on its own and through its members – has sought to delay. The fact is that many companies are receiving, under the existing plan, payments which they may have to keep, but which they also must know cannot be justified in this docket. As a result, their strategy is obvious – to use every procedural mechanism available to them to delay this proceeding. BellSouth is entitled to discovery about facts that support – **and facts that contradict** – the opinions that CompSouth hopes to offer in this docket. Because CompSouth is an entity made up of the individual companies who have received these subpoenas, BellSouth has no choice but to look to those companies in order to obtain this information. If these companies are unwilling to provide the information, then CompSouth's opinions and assertions should not be heard in this docket.

Respectfully submitted,

BELLSOUTH TELECOMMUNICATIONS, INC.

By: 

Guy M. Hicks  
Joelle J Phillips  
333 Commerce Street, Suite 2101  
Nashville, TN 37201-3300  
615/214-6301

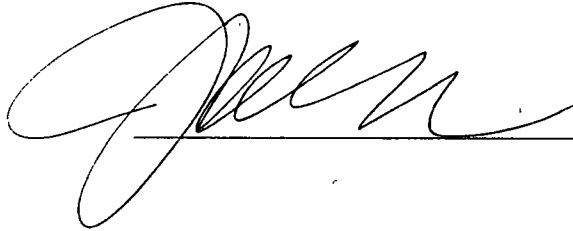
R. Douglas Lackey  
Robert Culpepper  
675 W. Peachtree St., NE, Suite 4300  
Atlanta, GA 30375

**CERTIFICATE OF SERVICE**

I hereby certify that on February 11, 2005, a copy of the foregoing document was served on the following, via hand delivery, facsimile, overnight, electronic mail or US Mail, addressed as follows:

- ☐ Hand
- ☐ Mail
- ☐ Facsimile
- ☐ Overnight
- ☒ Electronic

Henry Walker, Esquire  
Boult, Cummings, et al.  
P. O. Box 198062  
Nashville, TN 37219-8062  
[hwalker@boultcummings.com](mailto:hwalker@boultcummings.com)



---